

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARRIE MUMPHREY, No C 07-2725 VRW
Plaintiff, ORDER
v
MICHAEL J ASTRUE, Commissioner of
Social Security,
Defendant.

Plaintiff Carrie Mumphrey appeals from the decision of the Social Security Administration ("SSA") denying her social security disability insurance benefits ("DIB") and supplemental security income ("SSI"). The court now considers cross-motions for summary judgment. Doc # 15, Doc #16. Because the administrative law judge ("ALJ") correctly determined that the record contains no objective medical findings to support plaintiff's claims of disabling physical and mental limitations, the court GRANTS defendant's motion and DENIES plaintiff's motion.

//

//

I

A

The record in this case presents an unusually stark contrast between a claimant's subjective complaints and the medical signs and laboratory findings.

Plaintiff was born on November 26, 1980. Administrative Record ("AR") (Doc #12) at 14. Plaintiff is a high school graduate and her employment history is slight, consisting of six months working as a cashier at a Piggly-Wiggly supermarket and a total of eleven months as a Certified Nursing Assistant ("CNA") in Arkansas for three different employers over the course of eighteen months. AR at 75, 95, 333-34. She moved to California from Arkansas in August of 2003. AR 309. She did not work at all following her move to California, but did give birth to a child who was two years old at the time of the hearing before the ALJ. AR 307.

According to plaintiff's testimony, she first experienced pain in her lower back when she was a teenager and subsequently "tore [her] knee" while working as a CNA, but did not begin experiencing pain in her knee until after she moved to California. AR 309-13. Plaintiff also testified that she first began seeing a psychiatrist for her alleged depression two months before the hearing, around May of 2006. AR 318-19.

The earliest medical records are those from Summit Medical Center between November 2003 and May 2004, when plaintiff sought emergency room services five times for various complaints, especially lower back pain and various post-partum issues. AR 146-75. Each of these visits resulted in a prescription being issued for Vicodin or for Tylenol with Codeine, both strong, narcotic- and

1 acetaminophen-based pain relievers, sometimes in tandem with muscle
2 relaxants. AR 152, 157, 160, 168, 173. Several of these records
3 refer to plaintiff having a "history of scoliosis," e g AR 173.

4 Then, between June 9, 2004, and January 10, 2006,
5 plaintiff visited the office of her treating physician Dr Tolbert
6 Small at least eighteen times. AR 191-231. During these visits
7 she complained of a host of infirmities including lumbar back pain,
8 leg pain, knee pain, shoulder pain, a foot problem, inability to
9 walk or stand long, migraines, difficulty sleeping and depression.
10 AR 191, 193, 203, 219, 222. In treating plaintiff, Dr Small and
11 his assistant, Candace Byers, referred her to physical therapy but
12 she did not follow through and apparently never visited a physical
13 therapist. AR 17. Dr Small also provided plaintiff with shoe
14 inserts to be placed under her feet for comfort, which plaintiff
15 testified were not helpful and that she only used occasionally. AR
16 317-18. In addition, Dr Small prescribed a variety of medications;
17 in her most recent Disability Report, plaintiff reported taking
18 Advair and Albuterol for her asthma conditions and Roloaxin (a
19 muscle relaxant) and Vicodin. AR 116. Although plaintiff
20 requested "stronger Vicodin" and told her physician that the
21 Vicodin was "not helpful," her Vicodin prescriptions appear to have
22 been refilled routinely throughout the treating relationship. AR
23 192, 200, 203, 209, 211, 212, 215, 217.

24 Attempting to locate a clinical basis for plaintiff's
25 complaints, physicians ordered several magnetic resonance imaging
26 (MRI) exams of plaintiff's knee and spine. All of these were
27 essentially normal. AR 145, 176, 177, 232. For example,

28 \\\

1 radiologist Jeffrey L Black wrote under "impression" simply "Normal
2 left knee." AR 145.

3
4 B

5 On August 19, 2004, plaintiff filed an application for
6 DIB (her second) and for SSI (her sixth) alleging a disability
7 onset date of July 1, 2003 due to "scoliosis and arthritis in her
8 entire left side." AR 13-14. The SSA denied these applications
9 initially and on reconsideration. AR 24-32, 34-39. Plaintiff
10 filed a timely request for hearing on March 24, 2005. AR 40. For
11 reasons unclear from the record, the hearing did not take place
12 until July 17, 2006. AR 300.

13 At the hearing, plaintiff, who appeared with her
14 attorney, testified that although she was responsible for caring
15 for her healthy, two-year-old daughter nine hours per day while her
16 husband was at work, she did not take her out for walks or do much
17 with her, nor did she do laundry or housekeeping because of her
18 pain and depression: "I just can't motivate myself to get up and
19 do anything." AR 314-25. A vocational expert also gave testimony
20 not relevant to this appeal.

21 The ALJ specifically considered the following physicians'
22 reports: (1) consultative examination reports ordered in connection
23 with plaintiff's application for social security benefits from
24 three examining physicians (AR 133-38, 141-43); (2) a medical
25 source statement and residual functional capacity ("RFC")
26 questionnaires from treating physician Dr Small (AR 139-40, 178-83,
27 184-86, 187-90); and (3) an assessment and RFC questionnaire from
28 plaintiff's treating psychiatrist, Dr Theodore Pait (AR 271-84).

1 Dr Rajeswari Kumar, an orthopedist and diplomate in both
2 physical and rehabilitative medicine and in pain medicine, examined
3 plaintiff in March 2004. AR 133-36. He observed that, while
4 plaintiff reported "constant pain * * * aggravated with sitting,
5 standing, walking half a block, bending or lifting," the clinical
6 exam findings were normal:

7 On physical exam, [plaintiff] was able to walk without
8 any assistive device in the examining room. The
9 cervical spine range of motion is normal. Lumbar spine
10 range of motion is minimally restricted. There is no
11 paraspinal muscle spasm or tenderness. There is no
12 clinical evidence of radiculopathy. No evidence of
13 scoliosis on clinical exam. Rest of the upper and
14 lower extremities does not reveal any joint pathology.
15 There is no neurological deficit.

16 AR 136. Under "functional limitations," Dr Kumar wrote simply:
17 "[t]he patient has multiple subjective complaints, but there are no
18 objective findings." Id.

19 Dr Donald Townsend, a specialist in orthopedic surgery
20 and pediatric orthopedics, saw plaintiff on June 17, 2004. AR 138.
21 He noted that plaintiff's left hemipelvis was 2cm shorter than the
22 right, found restricted range of motion of her "back to forward
23 flexion, right and left lateral bending and rotation" and noted
24 "some tenderness over the right sacroiliac joint." He noted,
25 however, "no curvature of the spine," "[n]o evidence of scoliosis,"
26 "alignment of the vertebra was * * * normal," and "normal motor and
27 sensory findings." He referred plaintiff to physical therapy for
28 back and postural exercise. AR 138.

Dr Amit Rajguru, a board-certified internal medicine
physician, saw plaintiff on November 9, 2004. His report commented
on plaintiff's "very slow gait" and her difficulty mounting and
dismounting from the examination table and noted "a history of left

1 arm numbness" and clinical findings of decreased sensation in the
2 left arm. AR 141-42. In sharp contrast with the first two
3 physicians, Dr Rajguru wrote under "medical history" that
4 "[plaintiff had] been diagnosed with scoliosis of her thoracolumbar
5 spine region" and found her back on physical examination "notable
6 for moderate amount of scoliosis in the thoracic and lumbar spine
7 areas [and] decreased range of motion of the lumbar spine."

8 Dr Small completed two RFC questionnaires for plaintiff
9 on February 10, 2005 and October 25, 2005, respectively. AR 178-
10 90. In the former, Dr Small identified three "positive objective
11 signs" of weakened physical capacity, including reduced grip
12 strength in the left hand, tenderness and a "mild dextoscoliosis,"
13 stated that plaintiff was depressed due to pain associated with
14 these conditions and wrote that plaintiff was "[i]ncapable of even
15 'low stress' jobs," due to "difficulty handling stress in [her]
16 current life" and that she "'goes off' frequently, [and is] easily
17 'fed up' and frustrated." AR 179-80. Dr Small also opined that
18 plaintiff could walk only half a block without rest or severe pain
19 and could sit or stand for less than two hours. AR 181. In the
20 later RFC assessment, Dr Small wrote that plaintiff could sit for
21 30 minutes "max," would not be able to "tolerate duty
22 environments," would be "unable to sustain focused attention," and,
23 due to "frequent periods of social withdrawal," could not adapt to
24 work or work-like situations. AR 184-86.

25 Dr Small's practice also completed a mental RFC
26 questionnaire dated November 23, 2005 and addressed to the SSA. AR
27 187-90. This report, bearing an illegible signature, diagnosed
28 plaintiff with depression and checked boxes indicating plaintiff's

1 "mental abilities and aptitude needed to do unskilled work" to be
2 "poor or none" (the lowest of four choices) in twelve of sixteen
3 categories and "fair" in the remaining four. AR 187-88. It
4 repeated that plaintiff "'goes off' frequently," [and is] [e]asily
5 fed up and frustrated. Difficulty finishing household tasks,
6 sometimes can't get out of bed. Social withdrawal." AR 188. The
7 report marked plaintiff similarly unfit for "semiskilled or skilled
8 work" and "particular types of jobs" and checked the box indicating
9 plaintiff would be absent from work "more than three times a
10 month"—the most generous of six choices. AR 189-90.

11 Plaintiff's treating psychiatrist, Dr Pait, completed an
12 "initial assessment form" and a mental RFC questionnaire. AR 276-
13 84. In the initial assessment form dated April 25, 2006, Dr Pait
14 noted that plaintiff had been depressed for over a year according
15 to plaintiff's primary physician and noted plaintiff's symptoms to
16 include decreased energy, irritability and social withdrawal. He
17 noted that plaintiff denied being anxious, feeling hopeless or
18 helpless or having hallucinations, delusions or suicidal thoughts.
19 In the field regarding mental health services, however, Dr Pait
20 checked a box indicating that plaintiff displays "psychotic
21 symptoms or suicidal idea/acts" and that she was unable to
22 establish and maintain social support systems. AR 280. Regarding
23 functional limitations, Dr Pait checked boxes indicating "marked"
24 limitations in the areas of daily activities, social functioning,
25 concentration, persistence "of place" [sic] and episodes of
26 decompensation. Dr Pait noted plaintiff's current medications to
27 be Vicodin, Midrin, Naprosyn, Robaxin, Elavil, Prilosec and
28 albuterol, marked "no" for all categories of substance abuse on the

1 form (prescription drugs were not included on this list) and
2 recommended discontinuing Paxil (which was not among those he had
3 listed as plaintiff's "current" medications) and starting Efflexor
4 for depression. AR 280.

5 Dr Pait completed the same mental RFC form as Dr Small,
6 discussed above. AR 282-84. He marked "mental abilities or
7 aptitude needed to do unskilled work" to be "poor or none" in ten
8 of the sixteen categories and "fair" in the rest. With respect to
9 medical or clinical findings to support his assessment, Dr Pait
10 wrote, "chronic pain from scoliosis limits most categories above
11 the pain is severe and unpredictable [sic]." He too checked the
12 "more than three times a month" box to indicate that he considered
13 frequent absences from work likely.

14 On October 27, 2006, the ALJ issued an opinion
15 determining that plaintiff had failed to demonstrate any
16 impairment, much less the "severe impairment" a claimant must show
17 to pass step two of the five-step analysis. At the conclusion of
18 his discussion, the ALJ wrote the following blunt summary of his
19 analysis:

20 [t]he claimant's medical records contain no objective
21 abnormal evidence that would support a finding that
22 she suffers from an "impairment," whether physical or
23 mental. The opinions of the claimant's treating
24 doctors and Dr Rajguru do not compensate for this
25 lack, since they are demonstrably unreliable. Yet,
26 even if I could make a finding that the claimant's
27 back pain or depression was an "impairment," as
28 defined above, I would not be able to find that it is
"severe." The claimant's statements that her pain
prevents her from performing all work are undercut by
her lack of work history and her failure to comply
with treatments prescribed to improve this pain. And
the opinions of the claimant's various doctors that
her back pain and depression both markedly impair her
functioning are not supportable, due to their lack of
expertise to render such opinions, and the complete

1 lack of evidence to support them. There are a lot of
2 complaints in these records, but there is not much
more than that.

3 AR 19.

4 The ALJ found Dr Rajguru's pain assessment based on
5 plaintiff's alleged scoliosis unreliable in light of Dr Kumar's
6 specific finding that there was no evidence of scoliosis. AR 16.
7 Noting that "[a] claimant either has scoliosis or she does not,"
8 the ALJ weighed Dr Kumar's opinion more heavily than that of Dr
9 Rajguru because Dr Kumar was a specialist in orthopedics while Dr
10 Rajguru was not. Id.

11 With respect to the assessments of other doctors,
12 including Dr Small, who had found plaintiff unable to perform all
13 work, the ALJ discounted these because they were "not supported by
14 the evidence." Regarding Dr Small's report, the ALJ noted the
15 great discrepancy between the quite minor objective medical
16 findings on the one hand and the extent of limitations marked on
17 the form on the other. AR 16-17. For example, he had "a hard time
18 accepting" that a claimant with only "'moderately' tender inferior
19 paralumbers could not lift 10 pounds or more or stand and/or walk
20 no more than 2 hours in 8" per Dr Small. AR 17.

21 The ALJ discounted Dr Pait's opinion in its entirety
22 based on its internal inconsistencies, noting that Dr Pait's
23 indication of "marked" functional limitations on plaintiff's
24 ability to perform daily and work-related activities was
25 inconsistent with the observation that plaintiff's mood was "okay"
26 and her linear thought process fully oriented. AR 18. Further, he
27 noted that Dr Pait had given inconsistent indications regarding
28 suicidal tendencies and stated "due to obvious contradictions * * *

1 between those findings and Dr Pait's opinion as to their impact on
2 the claimant's functioning, I find him to be a completely
3 unreliable source." AR 18-19.

4 The ALJ also found fault with Dr Pait and Dr Small for
5 issuing opinions outside the scope of their expertise. AR 18. Dr
6 Small's issuance of an opinion on plaintiff's mental capabilities,
7 which were outside his scope of expertise as a physician,
8 contributed to the ALJ's decision to discount his opinion. AR 18.
9 Similarly, the ALJ characterized Dr Pait's RFC opinion, which
10 rested entirely on an unsubstantiated finding of "chronic pain
11 from scoliosis" as a "regurgitation of the claimant's
12 unsubstantiated descriptions of her pain." AR 18.

13 As for plaintiff's credibility, the ALJ commented on long
14 gaps in medical treatment, including a four-month gap right after
15 the alleged onset date (AR 16), on plaintiff's failure to follow
16 through on referrals to physical therapy for back pain and her
17 legally insufficient excuses therefor, and on the fact that
18 plaintiff's physicians prescribed no other treatments commonly
19 employed for back pain, such as a TENS unit, a home exercise
20 program, chiropractic or acupuncture care. AR 17. In addition,
21 the ALJ commented that plaintiff's sparse work history undercut her
22 claim that she would work but for disabling pain: "from what I can
23 tell, the claimant has never performed [substantial gainful
24 activity], even in the years prior to her alleged disability." Id.

25 Plaintiff timely filed this action seeking judicial
26 review of the SSA's action.

27 \\
28 \\
29 \\
30 \\
31 \\
32 \\
33 \\
34 \\
35 \\
36 \\
37 \\
38 \\
39 \\
40 \\
41 \\
42 \\
43 \\
44 \\
45 \\
46 \\
47 \\
48 \\
49 \\
50 \\
51 \\
52 \\
53 \\
54 \\
55 \\
56 \\
57 \\
58 \\
59 \\
60 \\
61 \\
62 \\
63 \\
64 \\
65 \\
66 \\
67 \\
68 \\
69 \\
70 \\
71 \\
72 \\
73 \\
74 \\
75 \\
76 \\
77 \\
78 \\
79 \\
80 \\
81 \\
82 \\
83 \\
84 \\
85 \\
86 \\
87 \\
88 \\
89 \\
90 \\
91 \\
92 \\
93 \\
94 \\
95 \\
96 \\
97 \\
98 \\
99 \\
100 \\
101 \\
102 \\
103 \\
104 \\
105 \\
106 \\
107 \\
108 \\
109 \\
110 \\
111 \\
112 \\
113 \\
114 \\
115 \\
116 \\
117 \\
118 \\
119 \\
120 \\
121 \\
122 \\
123 \\
124 \\
125 \\
126 \\
127 \\
128 \\
129 \\
130 \\
131 \\
132 \\
133 \\
134 \\
135 \\
136 \\
137 \\
138 \\
139 \\
140 \\
141 \\
142 \\
143 \\
144 \\
145 \\
146 \\
147 \\
148 \\
149 \\
150 \\
151 \\
152 \\
153 \\
154 \\
155 \\
156 \\
157 \\
158 \\
159 \\
160 \\
161 \\
162 \\
163 \\
164 \\
165 \\
166 \\
167 \\
168 \\
169 \\
170 \\
171 \\
172 \\
173 \\
174 \\
175 \\
176 \\
177 \\
178 \\
179 \\
180 \\
181 \\
182 \\
183 \\
184 \\
185 \\
186 \\
187 \\
188 \\
189 \\
190 \\
191 \\
192 \\
193 \\
194 \\
195 \\
196 \\
197 \\
198 \\
199 \\
200 \\
201 \\
202 \\
203 \\
204 \\
205 \\
206 \\
207 \\
208 \\
209 \\
210 \\
211 \\
212 \\
213 \\
214 \\
215 \\
216 \\
217 \\
218 \\
219 \\
220 \\
221 \\
222 \\
223 \\
224 \\
225 \\
226 \\
227 \\
228 \\
229 \\
230 \\
231 \\
232 \\
233 \\
234 \\
235 \\
236 \\
237 \\
238 \\
239 \\
240 \\
241 \\
242 \\
243 \\
244 \\
245 \\
246 \\
247 \\
248 \\
249 \\
250 \\
251 \\
252 \\
253 \\
254 \\
255 \\
256 \\
257 \\
258 \\
259 \\
260 \\
261 \\
262 \\
263 \\
264 \\
265 \\
266 \\
267 \\
268 \\
269 \\
270 \\
271 \\
272 \\
273 \\
274 \\
275 \\
276 \\
277 \\
278 \\
279 \\
280 \\
281 \\
282 \\
283 \\
284 \\
285 \\
286 \\
287 \\
288 \\
289 \\
290 \\
291 \\
292 \\
293 \\
294 \\
295 \\
296 \\
297 \\
298 \\
299 \\
300 \\
301 \\
302 \\
303 \\
304 \\
305 \\
306 \\
307 \\
308 \\
309 \\
310 \\
311 \\
312 \\
313 \\
314 \\
315 \\
316 \\
317 \\
318 \\
319 \\
320 \\
321 \\
322 \\
323 \\
324 \\
325 \\
326 \\
327 \\
328 \\
329 \\
330 \\
331 \\
332 \\
333 \\
334 \\
335 \\
336 \\
337 \\
338 \\
339 \\
340 \\
341 \\
342 \\
343 \\
344 \\
345 \\
346 \\
347 \\
348 \\
349 \\
350 \\
351 \\
352 \\
353 \\
354 \\
355 \\
356 \\
357 \\
358 \\
359 \\
360 \\
361 \\
362 \\
363 \\
364 \\
365 \\
366 \\
367 \\
368 \\
369 \\
370 \\
371 \\
372 \\
373 \\
374 \\
375 \\
376 \\
377 \\
378 \\
379 \\
380 \\
381 \\
382 \\
383 \\
384 \\
385 \\
386 \\
387 \\
388 \\
389 \\
390 \\
391 \\
392 \\
393 \\
394 \\
395 \\
396 \\
397 \\
398 \\
399 \\
400 \\
401 \\
402 \\
403 \\
404 \\
405 \\
406 \\
407 \\
408 \\
409 \\
410 \\
411 \\
412 \\
413 \\
414 \\
415 \\
416 \\
417 \\
418 \\
419 \\
420 \\
421 \\
422 \\
423 \\
424 \\
425 \\
426 \\
427 \\
428 \\
429 \\
430 \\
431 \\
432 \\
433 \\
434 \\
435 \\
436 \\
437 \\
438 \\
439 \\
440 \\
441 \\
442 \\
443 \\
444 \\
445 \\
446 \\
447 \\
448 \\
449 \\
450 \\
451 \\
452 \\
453 \\
454 \\
455 \\
456 \\
457 \\
458 \\
459 \\
460 \\
461 \\
462 \\
463 \\
464 \\
465 \\
466 \\
467 \\
468 \\
469 \\
470 \\
471 \\
472 \\
473 \\
474 \\
475 \\
476 \\
477 \\
478 \\
479 \\
480 \\
481 \\
482 \\
483 \\
484 \\
485 \\
486 \\
487 \\
488 \\
489 \\
490 \\
491 \\
492 \\
493 \\
494 \\
495 \\
496 \\
497 \\
498 \\
499 \\
500 \\
501 \\
502 \\
503 \\
504 \\
505 \\
506 \\
507 \\
508 \\
509 \\
510 \\
511 \\
512 \\
513 \\
514 \\
515 \\
516 \\
517 \\
518 \\
519 \\
520 \\
521 \\
522 \\
523 \\
524 \\
525 \\
526 \\
527 \\
528 \\
529 \\
530 \\
531 \\
532 \\
533 \\
534 \\
535 \\
536 \\
537 \\
538 \\
539 \\
540 \\
541 \\
542 \\
543 \\
544 \\
545 \\
546 \\
547 \\
548 \\
549 \\
550 \\
551 \\
552 \\
553 \\
554 \\
555 \\
556 \\
557 \\
558 \\
559 \\
560 \\
561 \\
562 \\
563 \\
564 \\
565 \\
566 \\
567 \\
568 \\
569 \\
570 \\
571 \\
572 \\
573 \\
574 \\
575 \\
576 \\
577 \\
578 \\
579 \\
580 \\
581 \\
582 \\
583 \\
584 \\
585 \\
586 \\
587 \\
588 \\
589 \\
590 \\
591 \\
592 \\
593 \\
594 \\
595 \\
596 \\
597 \\
598 \\
599 \\
600 \\
601 \\
602 \\
603 \\
604 \\
605 \\
606 \\
607 \\
608 \\
609 \\
610 \\
611 \\
612 \\
613 \\
614 \\
615 \\
616 \\
617 \\
618 \\
619 \\
620 \\
621 \\
622 \\
623 \\
624 \\
625 \\
626 \\
627 \\
628 \\
629 \\
630 \\
631 \\
632 \\
633 \\
634 \\
635 \\
636 \\
637 \\
638 \\
639 \\
640 \\
641 \\
642 \\
643 \\
644 \\
645 \\
646 \\
647 \\
648 \\
649 \\
650 \\
651 \\
652 \\
653 \\
654 \\
655 \\
656 \\
657 \\
658 \\
659 \\
660 \\
661 \\
662 \\
663 \\
664 \\
665 \\
666 \\
667 \\
668 \\
669 \\
670 \\
671 \\
672 \\
673 \\
674 \\
675 \\
676 \\
677 \\
678 \\
679 \\
680 \\
681 \\
682 \\
683 \\
684 \\
685 \\
686 \\
687 \\
688 \\
689 \\
690 \\
691 \\
692 \\
693 \\
694 \\
695 \\
696 \\
697 \\
698 \\
699 \\
700 \\
701 \\
702 \\
703 \\
704 \\
705 \\
706 \\
707 \\
708 \\
709 \\
710 \\
711 \\
712 \\
713 \\
714 \\
715 \\
716 \\
717 \\
718 \\
719 \\
720 \\
721 \\
722 \\
723 \\
724 \\
725 \\
726 \\
727 \\
728 \\
729 \\
730 \\
731 \\
732 \\
733 \\
734 \\
735 \\
736 \\
737 \\
738 \\
739 \\
740 \\
741 \\
742 \\
743 \\
744 \\
745 \\
746 \\
747 \\
748 \\
749 \\
750 \\
751 \\
752 \\
753 \\
754 \\
755 \\
756 \\
757 \\
758 \\
759 \\
760 \\
761 \\
762 \\
763 \\
764 \\
765 \\
766 \\
767 \\
768 \\
769 \\
770 \\
771 \\
772 \\
773 \\
774 \\
775 \\
776 \\
777 \\
778 \\
779 \\
780 \\
781 \\
782 \\
783 \\
784 \\
785 \\
786 \\
787 \\
788 \\
789 \\
790 \\
791 \\
792 \\
793 \\
794 \\
795 \\
796 \\
797 \\
798 \\
799 \\
800 \\
801 \\
802 \\
803 \\
804 \\
805 \\
806 \\
807 \\
808 \\
809 \\
810 \\
811 \\
812 \\
813 \\
814 \\
815 \\
816 \\
817 \\
818 \\
819 \\
820 \\
821 \\
822 \\
823 \\
824 \\
825 \\
826 \\
827 \\
828 \\
829 \\
830 \\
831 \\
832 \\
833 \\
834 \\
835 \\
836 \\
837 \\
838 \\
839 \\
840 \\
841 \\
842 \\
843 \\
844 \\
845 \\
846 \\
847 \\
848 \\
849 \\
850 \\
851 \\
852 \\
853 \\
854 \\
855 \\
856 \\
857 \\
858 \\
859 \\
860 \\
861 \\
862 \\
863 \\
864 \\
865 \\
866 \\
867 \\
868 \\
869 \\
870 \\
871 \\
872 \\
873 \\
874 \\
875 \\
876 \\
877 \\
878 \\
879 \\
880 \\
881 \\
882 \\
883 \\
884 \\
885 \\
886 \\
887 \\
888 \\
889 \\
890 \\
891 \\
892 \\
893 \\
894 \\
895 \\
896 \\
897 \\
898 \\
899 \\
900 \\
901 \\
902 \\
903 \\
904 \\
905 \\
906 \\
907 \\
908 \\
909 \\
910 \\
911 \\
912 \\
913 \\
914 \\
915 \\
916 \\
917 \\
918 \\
919 \\
920 \\
921 \\
922 \\
923 \\
924 \\
925 \\
926 \\
927 \\
928 \\
929 \\
930 \\
931 \\
932 \\
933 \\
934 \\
935 \\
936 \\
937 \\
938 \\
939 \\
940 \\
941 \\
942 \\
943 \\
944 \\
945 \\
946 \\
947 \\
948 \\
949 \\
950 \\
951 \\
952 \\
953 \\
954 \\
955 \\
956 \\
957 \\
958 \\
959 \\
960 \\
961 \\
962 \\
963 \\
964 \\
965 \\
966 \\
967 \\
968 \\
969 \\
970 \\
971 \\
972 \\
973 \\
974 \\
975 \\
976 \\
977 \\
978 \\
979 \\
980 \\
981 \\
982 \\
983 \\
984 \\
985 \\
986 \\
987 \\
988 \\
989 \\
990 \\
991 \\
992 \\
993 \\
994 \\
995 \\
996 \\
997 \\
998 \\
999 \\
1000 \\
1001 \\
1002 \\
1003 \\
1004 \\
1005 \\
1006 \\
1007 \\
1008 \\
1009 \\
1010 \\
1011 \\
1012 \\
1013 \\
1014 \\
1015 \\
1016 \\
1017 \\
1018 \\
1019 \\
1020 \\
1021 \\
1022 \\
1023 \\
1024 \\
1025 \\
1026 \\
1027 \\
1028 \\
1029 \\
1030 \\
1031 \\
1032 \\
1033 \\
1034 \\
1035 \\
1036 \\
1037 \\
1038 \\
1039 \\
1040 \\
1041 \\
1042 \\
1043 \\
1044 \\
1045 \\
1046 \\
1047 \\
1048 \\
1049 \\
1050 \\
1051 \\
1052 \\
1053 \\
1054 \\
1055 \\
1056 \\
1057 \\
1058 \\
1059 \\
1060 \\
1061 \\
1062 \\
1063 \\
1064 \\
1065 \\
1066 \\
1067 \\
1068 \\
1069 \\
1070 \\
1071 \\
1072 \\
1073 \\
1074 \\
1075 \\
1076 \\
1077 \\
1078 \\
1079 \\
1080 \\
1081 \\
1082 \\
1083 \\
1084 \\
1085 \\
1086 \\
1087 \\
1088 \\
1089 \\
1090 \\
1091 \\
1092 \\
1093 \\
1094 \\
1095 \\
1096 \\
1097 \\
1098 \\
1099 \\
1100 \\
1101 \\
1102 \\
1103 \\
1104 \\
1105 \\
1106 \\
1107 \\
1108 \\
1109 \\
1110 \\
1111 \\
1112 \\
1113 \\
1114 \\
1115 \\
1116 \\
1117 \\
1118 \\
1119 \\
1120 \\
1121 \\
1122 \\
1123 \\
1124 \\
1125 \\
1126 \\
1127 \\
1128 \\
1129 \\
1130 \\
1131 \\
1132 \\
1133 \\
1134 \\
1135 \\
1136 \\
1137 \\
1138 \\
1139 \\
1140 \\
1141 \\
1142 \\
1143 \\
1144 \\
1145 \\
1146 \\
1147 \\
1148 \\
1149 \\
1150 \\
1151 \\
1152 \\
1153 \\
1154 \\
1155 \\
1156 \\
1157 \\
1158 \\
1159 \\
1160 \\
1161 \\
1162 \\
1163 \\
1164 \\
1165 \\
1166 \\
1167 \\
1168 \\
1169 \\
1170 \\
1171 \\
1172 \\
1173 \\
1174 \\
1175 \\
1176 \\
1177 \\
1178 \\
1179 \\
1180 \\
1181 \\
1182 \\
1183 \\
1184 \\
1185 \\
1186 \\
1187 \\
1188 \\
1189 \\
1190 \\
1191 \\
1192 \\
1193 \\
1194 \\
1195 \\
1196 \\
1197 \\
1198 \\
1199 \\
1200 \\
1201 \\
1202 \\
1203 \\
1204 \\
1205 \\
1206 \\
1207 \\
1208 \\
1209 \\
1210 \\
1211 \\
1212 \\
1213 \\
1214 \\
1215 \\
1216 \\
1217 \\
1218 \\
1219 \\
1220 \\
1221 \\
1222 \\
1223 \\
1224 \\
1225 \\
1226 \\
1227 \\
1228 \\
1229 \\
1230 \\
1231 \\
1232 \\
1233 \\
1234 \\
1235 \\
1236 \\
1237 \\
1238 \\
1239 \\
1240 \\
1241 \\
1242 \\
1243 \\
1244 \\
1245 \\
1246 \\
1247 \\
1248 \\
1249 \\
1250 \\
1251 \\
1252 \\
1253 \\
1254 \\
1255 \\
1256 \\
1257 \\
1258 \\
1259 \\
1260 \\
1261 \\
1262 \\
1263 \\
1264 \\
1265 \\
1266 \\
1267 \\
1268 \\
1269 \\
1270 \\
1271 \\
1272 \\
1273 \\
1274 \\
1275 \\
1276 \\
1277 \\
1278 \\
1279 \\
1280 \\
1281 \\
1282 \\
1283 \\
1284 \\
1285 \\
1286 \\
1287 \\
1288 \\
1289 \\
1290 \\
1291 \\
1292 \\
1293 \\
1294 \\
1295 \\
1296 \\
1297 \\
1298 \\
1299 \\
1300 \\
1301 \\
1302 \\
1303 \\
1304 \\
1305 \\
1306 \\
1307 \\
1308 \\
1309 \\
1310 \\
1311 \\
1312 \\
1313 \\
1314 \\
1315 \\
1316 \\
1317 \\
1318 \\
1319 \\
1320 \\
1321 \\
1322 \\
1323 \\
1324 \\
1325 \\
1326 \\
1327 \\
1328 \\
1329 \\
1330 \\
1331 \\
1332 \\
1333 \\
1334 \\
1335 \\
1336 \\
1337 \\
1338 \\
1339 \\
1340 \\
1341 \\
1342 \\
1343 \\
1344 \\
1345 \\
1346 \\
1347 \\
1348 \\
1349 \\
1350 \\
1351 \\
1352 \\
1353 \\
1354 \\
1355 \\
1356 \\
1357 \\
1358 \\
1359 \\
1360 \\
1361 \\
1362 \\
1363 \\
1364 \\
1365 \\
1366 \\
1367 \\
1368 \\
1369 \\
1370 \\
1371 \\
1372 \\
1373 \\
1374 \\
1375 \\
1376 \\
1377 \\
1378 \\
1379 \\
1380 \\
1381 \\
1382 \\
1383 \\
1384 \\
1385 \\
1386 \\
1387 \\
1388 \\
1389 \\
1390 \\
1391 \\
1392 \\
1393 \\
1394 \\
1395 \\
1396 \\
1397 \\
1398 \\
1399 \\
1400 \\
1401 \\
1402 \\
1403 \\
1404 \\
1405 \\
1406 \\
1407 \\
1408 \\
1409 \\
1410 \\
1411 \\
1412 \\
1413 \\
1414 \\
1415 \\
1416 \\
1417 \\
1418 \\
1419 \\
1420 \\
1421 \\
1422 \\
1423 \\
1424 \\
1425 \\
1426 \\
1427 \\
1428 \\
1429 \\
1430 \\
1431 \\
1432 \\
1433 \\
1434 \\
1435 \\
1436 \\
1437 \\
1438 \\
1439 \\
1440 \\
1441 \\
1442 \\
1443 \\
1444 \\
1445 \\
1446 \\
1447 \\
1448 \\
1449 \\
1450 \\
1451 \\
1452 \\
1453 \\
1454 \\
1455 \\
1456 \\
1457 \\
1458 \\
1459 \\
1460 \\
1461 \\
1462 \\
1463 \\
1464 \\
1465 \\
1466 \\
1467 \\
1468 \\
1469 \\
1470 \\
1471 \\
1472 \\
1473 \\
1474 \\
1475 \\
1476 \\
1477 \\
1478 \\
1479 \\
1480 \\
1481 \\
1482 \\
1483 \\
1484 \\
1485 \\
1486 \\
1487 \\
1488 \\
1489 \\
1490 \\
1491 \\
1492 \\
1493 \\
1494 \\
1495 \\
1496 \\
1497 \\
1498 \\
1499 \\
1500 \\
1501 \\
1502 \\
1503 \\
1504 \\
1505 \\
1506 \\
1507 \\
1508 \\
1509 \\
1510 \\
1511 \\
1512 \\
1513 \\
1514 \\
1515 \\
1516 \\
1517 \\
1518 \\
1519 \\
1520 \\
1521 \\
1522 \\
1523 \\
1524 \\
1525 \\
1526 \\
1527 \\
1528 \\
1529 \\
1530 \\
1531 \\
1532 \\
1533 \\
1534 \\
1535 \\
1536 \\
1537 \\
1538 \\
1539 \\
1540 \\
1541 \\
1542 \\
1543 \\
1544 \\
1545 \\
1546 \\
1547 \\
1548 \\
1549 \\
1550 \\
1551 \\
1552 \\
1553 \\
1554 \\
1555 \\
1556 \\
1557 \\
1558 \\
1559 \\
1560 \\
1561 \\
1562 \\
1563 \\
1564 \\
1565 \\
1566 \\
1567 \\
1568 \\
1569 \\
1570 \\
1571 \\
1572 \\
1573 \\
1574 \\
1575 \\
1576 \\
1577 \\
1578 \\
1579 \\
1580 \\
1581 \\
1582 \\
1583 \\
1584 \\
1585 \\
1586 \\
1587 \\
1588 \\
1589 \\
1590 \\
1591 \\
1592 \\
1593 \\
1594 \\
1595 \\
1596 \\
1597 \\
1598 \\
1599 \\
1600 \\
1601 \\
1602 \\
1603 \\
1604 \\
1605 \\
1606 \\
1607 \\
1608 \\
1609 \\
1610 \\
1611 \\
1612 \\
1613 \\
1614 \\
1615 \\
1616 \\
1617 \\
1618 \\
1619 \\
1620 \\
1621 \\
1622 \\
1623 \\
1624 \\
1625 \

II

The court must uphold the SSA's decision to deny benefits if it is supported by substantial evidence and is not based on legal error. Andrews v Shalala, 53 F3d 1035, 1039 (9th Cir 1995). Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Andrews, 53 F3d at 1039. If evidence exists to support more than one rational interpretation, the court must defer to the SSA's decision. Morgan v Commissioner of the Social Security Administration, 169 F3d 595, 599 (9th Cir 1999). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony and resolving ambiguities. Andrews, 53 Fd at 1029.

To establish eligibility for social security benefits, the claimant has the burden of proving an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which * * * has lasted or can be expected to last for a continuous period of not less than 12 months." 42 USC §423(d)(1)(A). An "impairment" under the regulations refers to anatomical, physiological or psychological abnormalities indicated by "signs, symptoms, or laboratory findings" elicited by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR §404.1508; §416.908.

The social security regulations set forth a five-step sequential evaluation process for determining whether a claimant has met his or her burden. 20 CFR §404.1520. Relevant to this appeal are the first two of these steps. First, the ALJ must determine whether the claimant is engaged in substantial gainful

activity. 20 CFR §404.1520(b), § 416.920(b). If not, the second step examines whether the claimant's impairments are "severe" within the meaning of the regulations. 20 CFR §404.1520(c), § 416.920(b). If the impairments are determined to be "severe," the ALJ then follows the remaining steps to determine whether the severe impairments may be disabling.

Of special relevance to this case, §404.1528 (§416.928) states that the claimant's "statements alone are not enough to establish that there is a physical or mental impairment." Rather, "signs," defined as "anatomical, physiological, or psychological abnormalities which can be observed * * * [and] must be shown by medically acceptable clinical diagnostic techniques" and "laboratory findings" produced by "medically acceptable laboratory diagnostic techniques" are also required. See also §404.1529 (§416.929)(evaluation of symptoms requires medically determinable impairment established by medical signs or laboratory findings).

On appeal, plaintiff contends that the ALJ's determination that plaintiff does not have a severe impairment is not supported by substantial evidence. Doc #15 at 10. Specifically, plaintiff challenges the ALJ's decision to give little or no evidentiary weight to the opinions of Dr Small, Dr Pait and Dr Rajguru and to discount plaintiff's subjective pain testimony. Doc #15 at 9, 10.

A

Plaintiff first alleges that the ALJ improperly discounted the opinions of treating physicians Small and Pait and examining physician Rajguru. Doc #15 at 5-9. For the reasons

1 stated, the court finds that the ALJ's handling of these opinions
2 was in accordance with the applicable legal principles and
3 supported by substantial evidence.

4 In this circuit, cases distinguish among the opinions of
5 three types of physicians: (1) treating physician; (2) non-treating
6 examining physician; and (3) those who neither examine nor treat
7 the claimant. Lester v Chater, 81 F3d 821, 830 (9th Cir 1995).
8 Generally, more weight is given to the opinion of a treating source
9 than a non-treating source because the former is deemed likely to
10 be the "medical professional most able to provide a detailed,
11 longitudinal picture of the claimant's impairment." 20 CFR
12 §404.1527(d)(2), 416.927(d)(2). A treating physician's opinion is
13 not binding on an ALJ with respect to the existence of an
14 impairment or the ultimate determination of disability. Tonapetyan
15 v Halter, 242 F3d 1144, 1149 (9th Cir 2001). Indeed, the
16 regulations specifically reserve to the SSA the determination that
17 an individual is disabled. 20 CFR § 404.1527(e), 416.927(e).

18 In cases in which the treating doctor's opinion is not
19 contradicted by another doctor, it may be rejected only for "clear
20 and convincing reasons." Lester, 81 F3d at 830. If the treating
21 doctor's opinion is contradicted by another medical opinion, the
22 ALJ may not disregard the former opinion without providing
23 "specific and legitimate reasons" supported by substantial evidence
24 in the record for doing so. *Id.*

25 With respect to Dr Small, plaintiff contends, first, that
26 the ALJ failed to provide a legitimate reason for not giving Dr
27 Small's opinion controlling weight as the opinion of a treating
28 physician. Doc #15 at 6. In this case, at least two doctors

1 contradicted Dr Small's conclusion of plaintiff's incapacity to
2 engage in daily and work-related activities due to the pain related
3 to her "mild dextoscoliosis," tenderness and reduced grip strength
4 on her left hand. AR 178-79. Drs Kumar and Townsend, both
5 specialists in the relevant field, found no evidence of scoliosis
6 based on their examinations of plaintiff's spine. AR 136 (noting
7 no evidence of scoliosis on clinical exam); 138 (noting that the
8 inspection of her thoracolumbar spine showed no evidence of a
9 curvature and hence no evidence of scoliosis). Dr Kumar also
10 opined that plaintiff had no muscle tenderness. AR 136.
11 Consequently, the ALJ required "specific and legitimate reasons"
12 for discounting Dr Small's opinion.

13 The ALJ adequately explained his decision to discount Dr
14 Small's views as noted herein and his reasons for doing so were
15 legitimate: lack of measurable findings on diagnostic tests such
16 as MRI, contradictory findings by two specialists and internal
17 inconsistencies in Dr Small's own reports.

18 As a further argument, plaintiff contends—without
19 citation to authority—that the ALJ erred in failing to discuss all
20 of the six factors listed in 20 CFR §404.1527 (§416.927(d)), such
21 as length of the treatment relationship and frequency of
22 examination, nature and extent of the treatment relationship and so
23 on, in determining what weight to give his opinion. Doc #15 at 7.
24 This argument lacks merit. The applicable standard for a district
25 court's review of an ALJ's decision to reject the opinion of a
26 treating physician that is in conflict with that of an examining
27 physician is whether he has set forth "specific and legitimate
28 reasons supported by substantial evidence in the record for doing

1 so. Tonapetyan, 242 F3d at 1148. There is no requirement that the
2 ALJ treat § 404.1527(d) as a sort of checklist. In any event, it
3 is unclear how a more ample discussion of factors could have
4 rescued Dr Small's opinion in light of the lack of medical signs
5 and laboratory findings to support it.

6 Plaintiff next argues that the ALJ erred in discounting
7 the opinion of Dr Pait. Doc #15 at 7, 8; Doc #20 at 3. Plaintiff
8 urges that it was proper for Dr Pait to opine about "stressor[s]"
9 affecting a patient's mental state notwithstanding his
10 unfamiliarity with the true facts of plaintiff's physical
11 condition. Doc #20 at 3. This argument fails to bolster Dr Pait's
12 opinion. Dr Pait's assessment failed to indicate any medical or
13 clinical findings of his own to substantiate his assessment of
14 plaintiff's mental abilities and aptitude. AR 282. For reasons
15 unknown, plaintiff falsely informed Dr Pait that she suffered from
16 painful scoliosis (AR 282-83) and Dr Pait appears to have accepted
17 this as true. The ALJ need not accept opinions of psychiatrists
18 who merely echo the claimant's self-reported symptoms—especially
19 false ones—without indication as to how they "translate into
20 specific functional deficits which preclude work activity."
21 Morgan, 169 F3d at 601; see also Bayliss v Barnhart, 427 F3d 1211,
22 1217 (9th Cir 2005)(affirming ALJ's rejection of a psychological
23 assessment that was not based on review of objective medical data
24 or reports). Moreover, the internal inconsistencies noted in the
25 discussion herein constitute further substantial evidence
26 supporting the ALJ's decision to give little weight to Dr Pait's
27 opinion. See Morgan, 169 F3d at 601-03.

28 \\\

1 Plaintiff also argues that the ALJ erred in failing to
2 discuss some of the six factors in 20 CFR §404.1527(d) with respect
3 to Dr Pait. As noted previously, § 404.1527(d) is not a checklist.
4 So long as substantial evidence supports the ALJ's handling of a
5 medical opinion under the proper legal standard, as is the case
6 here, the district court is required to uphold it. In any event,
7 among the omitted factors was "length of the treatment
8 relationship," yet plaintiff began mental health treatment only two
9 months the hearing and Dr Pait completed the reports at issue early
10 in the treatment relationship, so this factor does not add weight
11 to those reports. AR 280, 284, 319.

12 Plaintiff argues that the ALJ erred in giving more
13 weight to the opinion of one examining physician—Dr Kumar —over
14 the other—Dr Rajguru. Doc #15 at 5. But the ALJ did so because
15 Dr Kumar was a specialist in the area of orthopedics while Dr
16 Rajguru was an internist, something that is specifically provided
17 for under 20 CFR §404.1527(d)(5) (§416.927(d)(5)): "We generally
18 give more weight to the opinion of a specialist about medical
19 issues related to his or her area of specialty than to the opinion
20 of a source who is not a specialist." Furthermore, Dr Kumar's
21 opinion that, based on his clinical examination, plaintiff did not
22 suffer from scoliosis (AR 136) was in accord with the opinion of
23 another specialist, Dr Townsend, as well as two MRI examinations of
24 plaintiff's spine. AR 138, 177, 232.

25 In her reply, plaintiff suggests that Dr Townsend's
26 finding that plaintiff's left hemipelvis was 2cm shorter than her
27 right and his referral to physical therapy (AR 138) somehow
28 buttresses the opinions of Drs Small and Rajguru. Doc # 20 at 2.

1 Dr Townsend's brief report, however, did not even suggest that the
2 pelvis finding could explain plaintiff's alleged chronic back pain.
3 This argument is therefore unavailing.

4
5 B

6 Plaintiff next argues that the ALJ improperly discounted
7 plaintiff's pain testimony. Doc #15 at 9, 10; Doc #20 at 4-5. In
8 deciding whether to accept a claimant's subjective symptom
9 testimony, an ALJ must perform two stages of analysis. Smolen v
10 Chater, 80 F3d 1273, 1281 (9th Cir 1996). First, the claimant must
11 produce objective medical evidence of an underlying impairment or
12 combination of impairments that "could reasonably be expected to
13 produce pain or other symptoms alleged." Smolen, 80 F3d at 1281-82.
14 Once the claimant has done so, the ALJ may reject the claimant's
15 testimony about the severity of her symptoms only by offering
16 "specific, clear and convincing reasons for doing so." Smolen, 80
17 F3d at 1281.

18 In this case, the ALJ determined that plaintiff had
19 failed to meet the threshold standard of showing an "impairment"
20 because the records "contain nothing more than her own complaints
21 of back pain." AR 16. Substantial evidence in the record as
22 detailed herein supports this determination. Therefore, the ALJ
23 was not required to proceed to the second step of the analysis.
24 Even though it was not required, however, the ALJ's decision
25 contained clear and convincing reasons for rejecting plaintiff's
26 pain testimony.

27 First, the ALJ noted that plaintiff had failed to follow
28 up on physical therapy referrals. AR 16. In response, plaintiff

1 relies on Nguyen v Chater, 100 F3d 1462 (9th Cir 1989). Doc #15 at
2 10. In Nguyen, the ALJ had doubted the severity of the claimant's
3 affective disorder based on his failure to pursue mental health
4 treatment. Nguyen, 100 F3d at 1465. Noting the widespread
5 underreporting of depression and that those afflicted may not
6 recognize the gravity of their mental illness, the Ninth Circuit in
7 Nguyen noted that is "is a questionable practice to chastise one
8 with a mental impairment for the exercise of poor judgment in
9 seeking rehabilitation." 100 F3d at 1465. Nguyen, however, is
10 inapposite. Here, the claimant failed to pursue physical therapy
11 for alleged back pain so severe that she could "hardly walk" or
12 spend more than five minutes on the computer. AR 311, 317.
13 Moreover, as the ALJ noted, other treatments typically prescribed
14 for back pain were not even discussed in the medical records. AR
15 17. The ALJ, therefore, was permitted to discount plaintiff's
16 subjective pain testimony. See Johnson v Shalala, 60 F3d 1428,
17 1434 (9th Cir 1995) (affirming ALJ's discounting of claimant's
18 subjective pain testimony due to a lack of medical treatment for
19 alleged debilitating back pain).

20 Second, the ALJ discredited plaintiff's testimony due to
21 her lack of work history, expressing doubt that plaintiff would
22 work even if she could. AR 17. The ALJ is permitted to rely on
23 the claimant's work history in making a credibility determination.
24 Thomas v Barnhart, 278 F3d 947, 958 (9th Cir 2002). Thomas held
25 that the ALJ may discredit the claimant's subjective complaints
26 based on his or her spotty work history or little propensity to
27 work. 278 F3d at 959. Plaintiff's work history as detailed herein
28 \\

1 was indeed "spotty" and was properly considered by the ALJ in
2 connection with his credibility determination.

3 Accordingly, the ALJ's adverse credibility determination
4 regarding plaintiff's subjective pain testimony is supported by
5 substantial evidence in the record.

7 III

8 For the reasons stated herein, the court GRANTS
9 defendant's motion for summary judgment (Doc #16) and DENIES
10 plaintiff's motion for summary judgment (Doc #15). The clerk is
11 directed to close the file and terminate all pending motions.

12
13 IT IS SO ORDERED.

14
15 

16 VAUGHN R WALKER
17 United States District Chief Judge
18
19
20
21
22
23
24
25
26
27
28